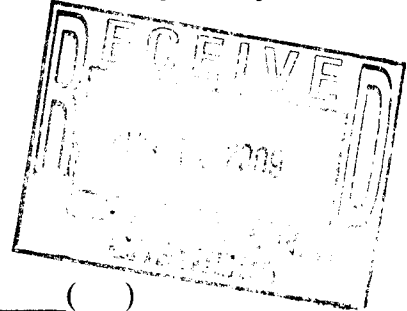


JUDGE COTE

**JAMES A. SAVILLE, JR.**  
**ANDREW R. BROWN**  
**HILL RIVKINS & HAYDEN LLP**  
45 Broadway – Suite 1500  
New York, NY 10006  
(212) 669-0600

**'09 CIV 7270**



09 Civ \_\_\_\_ ( )

09 CIV 7270

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

SHINSEI KOGYO CO. LTD.,

Plaintiff,

- against -

SENIOR MASTER INTERNATIONAL SHIP  
MANAGEMENT CO. LTD.,

Defendants.

**VERIFIED COMPLAINT**

Plaintiff, Shinsei Kogyo Co. Ltd., by and through its attorneys Hill Rivkins & Hayden, complaining of the above-named Defendant, alleges upon information and belief as follows:

**THE PARTIES**

1. At and during all material times hereinafter mentioned, plaintiff Shinsei Kogyo Co. Ltd. ("Shinsei"), was and now is a corporation or other business entity organized and existing by virtue of foreign law with an office and principal place of business at 4-75 Chugo, Nakagawa-ku, Japan.

2. At and during all material times hereinafter mentioned, defendant Senior Master International Ship Management Co. Ltd. ("Senior Master") was and now is a corporation or other business entity organized and existing by virtue of foreign law with an office and place of business at 212 Shunhe Road, Weihai Shandong Province, People's Republic of China and was

and now is engaged in business as a common carrier of merchandise by water for hire and owned, chartered, managed, operated and/or controlled the M/V JEWEL MASTER.

### **JURISDICTION**

3. Plaintiff's claims are admiralty and maritime claims within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and this Honorable Court has jurisdiction pursuant to 28 U.S.C. §1333.

4. This action is brought, in part, to obtain jurisdiction over the Defendant and to obtain security for any award and/or judgment that is eventually entered against it.

5. There is no statutory or maritime bar to the attachment sought herein.

### **BREACH OF A MARITIME CONTRACT**

6. On or about August 21, 2008, at the port of Bayuquan, China, there was delivered to Defendant a shipment of 1091 pallets of magnesia carbon bricks ("the Shipment") in good order and condition and suitable in every way for the intended transportation, which Defendant received, accepted and agreed to transport for certain consideration aboard the M/V JEWEL MASTER to Katakami, Japan.

7. At loading, Defendant took no exception to the good order and condition of the Shipment and defendant Senior Master issued bill of lading Q079 for the transport of the Shipment from China to Japan. A true and accurate copy of the bill of lading Q079 is attached hereto as Exhibit 1.

8. The Vessel arrived at the Port of Katakami, Japan, on August 27, 2008, and began discharging its cargo shortly thereafter. During discharge, damage to a portion of the Shipment was found. Thereafter, Plaintiff contacted its insurance underwriters who arranged for the shipment to be formally surveyed.

9. A survey conducted by Nippon Kaiji Kentei Kyokai (“NKKK”) concluded that the cause of the damage was improper stowage. A true and accurate copy of the narrative portion of the NKKK survey is attached hereto as Exhibit 2.

10. Defendant was responsible for stowage of the Shipment and the Shipment was in the exclusive care, custody and control of Defendant from loading through discharge in Japan.

11. By reason of the premises, Defendant was negligent and careless in its handling of the Shipment, violated its duties and obligations as a common carrier and bailee of said cargo, and was otherwise at fault.

12. Plaintiff has duly performed all duties and obligations on its part to be performed.

13. Plaintiff was the shipper, consignee, owner or otherwise had a proprietary interest of and in the Shipment and bring this action on its own behalf and, as agents and trustees, on behalf of and for the interest of all parties who may be or become interested in the said shipment, as their respective interests may ultimately appear, and plaintiff is entitled to maintain this action.

14. By reason of the premises, plaintiff has sustained damages nearly as same can now be estimated, no part of which has been paid, although duly demanded, in the principal amount of \$231,389.00. A true and accurate copy of the Subrogation Receipt is attached hereto as Exhibit 3.

**SENIOR MASTER CANNOT BE FOUND IN THE S.D.N.Y.**

15. After due investigation, Plaintiff respectfully submits that Defendant cannot be “found” in this District for purposes of and as delineated in Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

16. As set forth in the Fixture Note for the Shipment, full ocean freight for the Shipment was paid to defendant Senior Master in US dollars. A true and accurate copy of the Fixture Note is attached hereto as Exhibit 4.

17. Therefore, upon information and belief, plaintiff is informed that Defendant has, or will shortly have, assets within this District, including but not limited to, cash, funds, escrow funds, credits, wire transfer, electronic funds transfers, accounts, letters of credit, freights, sub-freights, charter hire and sub-charter hire, at or being transferred and/or wired to, from or through JPMorgan Chase Bank; Citibank N.A.; Bank of America; Bank of New York; Deutsche Bank; HSBC; Wachovia Bank; Standard Chartered Bank; BNP Paribas; Société Générale; ABN Amro; Bank of Communications, The Bank of East Asia, Bank of China and Shanghai Commercial Bank Ltd.; and/or any other garnishee as further investigation may uncover.

**W H E R E F O R E**, Plaintiff prays:

1. That process in due form of law according to the practice of this Court may issue against Senior Master International Ship Management Co. Ltd. citing it to appear and answer the foregoing, failing which, a default will be taken against them for the principal amount of the claim, plus interest, costs and attorneys' fees;

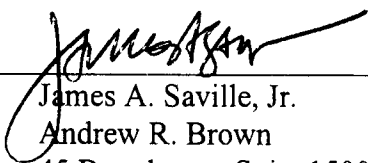
2. That if the Senior Master International Ship Management Co. Ltd. cannot be "found" within this District pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, that all assets of CMS up to and including **\$231,389.00** be restrained and attached, including but not limited to cash, funds, escrow funds, credits, wire transfer, electronic funds transfers, accounts, letters of credit, freights, sub-freights, charter hire, sub-charter hire, at or being transferred and/or wired to, from or through JPMorgan Chase Bank; Citibank N.A.;

Bank of America; Bank of New York; Deutsche Bank; HSBC; Wachovia Bank; Standard Chartered Bank; BNP Paribas; Société Générale; ABN Amro; Industrial Bank of Korea; Ziraat Bank; and Habib Bank Ltd.; and/or other garnishees upon who a Writ of Maritime Attachment and Garnishment may be served; and

3. And for such other and further relief as this Court may deem just and proper.

Dated: New York, New York  
August 18, 2009

HILL RIVKINS & HAYDEN LLP  
Attorneys for Plaintiff

By:   
James A. Saville, Jr.  
Andrew R. Brown  
45 Broadway - Suite 1500  
New York, New York 10006  
(212) 669-0600  
(212) 669-0699

**VERIFICATION**

I, James A. Saville, Jr., hereby affirm as follows:

1. I am a member of the firm of Hill Rivkins & Hayden LLP, attorneys for plaintiff Shinsei Kogyo Co., Ltd.
2. I have prepared and read the foregoing Verified Complaint and know the contents thereof and, the same is true to the best of my knowledge, information and belief.
3. The sources of my knowledge, information and belief are documents provided by our clients and our discussions with them.
4. As plaintiff is a foreign corporation or other business entity and none of its officers are located in the Southern District of New York, this verification is made by me as counsel of record.

I hereby affirm that the foregoing statements are true and correct.

Dated: New York, New York  
August 18, 2009

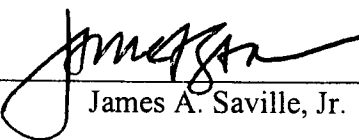
  
James A. Saville, Jr.

Exhibit 1

Shipper

DASHIQIAO HUALIN REFRACTORY CO.,LTD.

## BILL OF LADING

B/L No.	Q079
Nationality of Ocean Vessel	

SENIOR MASTER INTERNATIONAL  
SHIP MANAGEMENT CO.,LTD.

Consignee

TO ORDER

Notify Address

SHINSEI KOGYO CO.,LTD

Shipped on board the vessel named herein in apparent good order and condition (unless otherwise indicated) the goods or packages specified herein and to be discharged at the above mentioned port of discharge or as near thereto as the vessel may safely get and be always afloat.

The weight, measure, marks, numbers, quality, contents and value, being particulars furnished by the Shipper, are not checked by the Carrier on loading. The Shipper, Consignee and the Holder of this Bill of Lading hereby expressly accept and agree to all printed, written or stamped provisions, exceptions and conditions of this Bill of Lading, including those on the back hereof. One of the Bills of Lading duly endorsed must be surrendered in exchange for the goods or delivery order.

In witness whereof, the Carrier or his Agents has signed Bills of Lading all of this tenor and date, one of which being accomplished, the others to stand void.

Shippers are requested to note particularly the exceptions and conditions of this Bill of Lading with reference to the validity of the Insurance upon their goods.

Pre-carriage by

Place of Receipt by Pre-carrier

Ocean Vessel

JEWEL MASTER 8050

Port of Loading

BAYUQUAN PORT, CHINA

Port of Discharge

KATAKAMI PORT, JAPAN

Final destination (if goods to be transhipped at port of discharge)

Freight payable at

Number of original B(s)/L

THREE

Marks &amp; Nos./Container Nos.

Number and kind of packages, description of goods

Gross weight kgs

Measurement m<sup>3</sup>

N/M

1091 PALLETS

MAGNESIA CARBON BRICKS

G.W.: 1202.050 MTS

N.W.: 1126.716 MTS

FREIGHT COLLECT

TOTAL PACKAGES (IN WORDS)

SAY: ONE THOUSAND AND NINETY ONE PALLETS ONLY.

Freight and charges

Place of B(s)/L issue

Dated

BAYUQUAN

Signed for the Carrier

AS AGENT FOR THE CARRIER

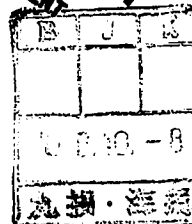
\*) Applicable only when document used as a Through Bill of Lading



Exhibit 2

**HEAD OFFICE**  
HATCHOBORI, CHUO-KU  
12, JAPAN  
2-0141  
3-8833  
nw.nkkl.jp/  
**BRANCHES**  
PRINCIPAL PORTS IN JAPAN  
**OVERSEAS OFFICES**  
THAILAND, SINGAPORE, MALAYSIA,  
PHILIPPINES, INDONESIA, CHINA,  
NETHERLANDS, VIETNAM, HONG KONG  
**LABORATORIES**  
YOKOHAMA, OSAKA, SINGAPORE

**NIPPON KAIJI KENTEI KYOKAI**  
LICENSED BY THE JAPANESE GOVERNMENT



**INTERNATIONAL INSPECTION & SURVEYING**  
INSPECTIONS REQUIRED BY REGULATIONS FOR  
DANGEROUS GOODS, SOLID BULK SUBSTANCES AND  
NOXIOUS LIQUID SUBSTANCES  
MARINE SURVEY AND CARGO INSPECTION  
MARINE CONSULTANT  
NON-MARINE ADJUSTING  
PETRO-CHEMICAL SUPERINTENDING  
LIQUEFIED GAS INSPECTION  
CHEMICAL ANALYSIS  
TANK CALIBRATION  
SAMPLING AND TESTING  
CARGO WEIGHING AND MEASURING

ORIGINAL  
(Ref. MIE, THK)

## Survey Report

HIMEJI

Date : Sept. 29, 2008

Report No. DA 24/08

**THIS IS TO CERTIFY THAT** we, the undersigned, did survey and report upon damage to cargo as follows;

Applicant :	Tokio Marine & Nichido Fire Insurance Co., Ltd.	
Date of Application :	Aug. 28, 2008	
Surveyor in charge :	E. Miyamoto & K. Takehara	
Place & Date of Survey :	Aboard the M/V "JEWEL MASTER" lying alongside wharf in Katakami port on Aug. 28, 2008 and subsequent dates, and later at the consignee's warehouse on Sept. 11 and 16, 2008	
Shipper :	Huailin Refractories (Dashiqiao) Pte. Ltd.	
Consignee :	Shinsei Kogyo Co., Ltd.	
Insurer :	Tokio Marine & Nichido Fire Insurance Co., Ltd.	
Policy No. & Amount Insured :	No. 45-00073200 & ¥144,136,000.00	
Name of Carrying Vessel :	M/V "JEWEL MASTER" (Voy. No. 0818)	Arrived at Katakami on Aug. 27, 2008
Description and Packing of the Goods :	Magnesia Carbon Bricks in pallets	B/L No. Q079
Shipment from/to :	Bayuquan, China / Katakami, Japan	
Date the goods unloaded :	To lighter on N. A.	Landed on Sept. 1, 2 and 3, 2008
Date the goods stored to the Place where Survey held :	Sept. 1 to 3, 2008	
External Condition of Packages when stored :	Many pallets were burst and broken	
Container No.	N. A.	
Place and Date of unpacking ex Container :	N. A.	
Notice of claim against carrier :	Filed on Sept. 3, 2008	
Remarks on delivery : on Cargo Boat Note	(65) pallets burst & repacked (53) pallets broken & repaired (257) pallets slightly broken	
Cause of Loss or Damage to the goods :	Breakage caused by shifting due to improper stowage	

This Certificate/Report contains measures to prevent forgery. If you have any question regarding the contents, please refer to the Original of the Certificate/Report.

## Schedule

Marks & Numbers	Description of the Goods				Quantity (No. of Packages)
N/M	Magnesia Carbon Bricks	No. of Pallets	Net Weight (M/T)	Unit Price (FOB Bayuquan)	1,091 pallets or 1,126.716 M/T  (375 pallets damaged)
	15ET1-B	125	130.188	USD982.00	
	C15ETA3-F & C15ET3A	140	172.272 0.258	USD986.00 USD861.00	
	C15ET3-F	17	26.068	USD1007.00	
	15ES	3	3.373	USD982.00	
	14KT	161	187.269	USD1031.00	
	14KS	17	24.276	USD998.00	
	14KS2	16	18.176	USD1031.00	
	10CF22	122	122.994	USD1094.00	
	10CK25	83	85.229	USD1127.00	
	10CFZ2	41	42.786	USD1049.00	
	10CFL-3	3	4.187	USD747.00	
	C10WK	22	20.414	USD969.00	
	C10WK-F	3	2.662	USD1020.00	
	15RK5K-F	8	7.888	USD1117.00	
	C20RC6(F)	12	10.797	USD902.00	
	C20RC6	2	1.681	USD876.00	
	C25RC6(F)	2	2.318	USD909.00	
	C15ET3A-F	17	23.147	USD986.00	
	14KT	145	104.636	USD923.00	
	10CFW	7	8.093	USD1101.00	
	12CFW	120	101.111	USD1082.00	
	C15ET3A-F(7) & C15ET3A(7)	2	1.717 0.022	USD836.00 USD711.00	
	14KT(7)	8	10.627	USD881.00	
	10CFZ2(7)	14	13.527	USD879.00	
	Sample brick	1	1.000	USD80.00	
	Total:	1,091	1126.716	Total Amount:	USD1,147,193.64

**PARTICULARS OF LOSS OR DAMAGE****Attending surveyors**

Mr. E. Miyamoto from Nippon Kaiji Kentei Kyokai, on behalf of the consignee.

The P & I surveyor on behalf of the owner, who did not attend on board in spite of an invitation in the course of unloading the cargo with Notice of Claim dated Sept. 3, 2008, through the ship's agent.

**State of cargo at time of survey**

We attended on board the vessel at 1100 hrs on Aug. 28, and bagged cargo was being discharged from the middle section of hold, and the captioned palletized cargo remained untouched in fore and aft sections, but many pallets were found to have shifted heavily to the starboard side.

After all the bagged cargo was discharged on Sept. 1, and subsequently, discharging of the bricks was carried out until Sept. 3.

**1. Stowage:**

According to the stowage plan, all the consignments were stowed as follows:

<u>Description</u>	<u>Quantity</u>	<u>Where stowed</u>
Magnesia Carbon Bricks	1,091 pallets	Fore & Aft sections
<u>Dolomite &amp; Graphite etc.</u>	<u>992 packages</u>	<u>Middle section</u>
Total:	2,083 packages	

The vessel has one hatch/one hold; with a single pull type steel hatch cover, eight (8) panels opening fore and six (6) panels aft.

The 1,091 pallets were stowed in the hold as follows:

1) Fore under deck space:	5 to 8 pallets x 3 tiers x 8 rows	= 171 pallets
2) Aft under deck space:	7 or 8 pallets x 3 tiers x 6 rows	= 135 pallets
3) Hatch-way space (fore):	10 pallets x 4 to 6 tiers x 8 rows	= 400 pallets
4) Hatch-way space (aft):	10 pallets x 4 to 6 tiers x 8 rows	= 385 pallets
Total:		1,091 pallets

**2. Condition of the cargo in hold**

- 1) The stowage of the cargo had seriously collapsed causing a great many pallets burst or broken. So, we roughly estimated damaged pallets in the hold, as follows:

Under deck space (fore & aft): 40 pallets  
Hatch-way space (fore & aft): 340 pallets

- 2) Many pallets shifted to the starboard side directly in contact with the ship's structures, such as shell side frames or horizontal stringer.
- 3) Many pallets were directly touching and/or hitting against each other.
- 4) Some pallets had turned over sideways or fallen down into the broken space.
- 5) There were broken spaces between the cargo and the hold structures at both sides, and among the cargo stow in places, as below:

Abreast shell plate: 1.5 m to 2.0 m  
Between pallets: 0.3 m to 0.5 m

- 6) The pallets were stowed mostly 5 or 6 tiers high in the hatch-way area, without chocking between the pallets or shoring against the ship's structures.
- 7) The pallets in the uppermost layer were lashed with manila rope, but the lashing ropes were loose. It was evident that such lashing method was inefficient.

**3. Discharging**

The cargo was discharged using a special fork lift as required because there was too great danger of further collapse of the cargo during discharging, with the best possible care by extra stevedores for three days in our presence.

Extra laborers: 5 men x 3 days = 15 men

The damaged pallets were separately put on trucks, and transferred to the consignee's bonded warehouse near the wharf.

**4. Condition of cargo in the warehouse****1) Packing**

The magnesia carbon bricks were piled on pallets, and covered with cleated fiberboard boxes secured with tension steel bands, and protected with steel angle padding at the four (4) vertical corners and the four (4) upper horizontal edges, as customary.

**2) Sorting and Classification of the damaged pallets**

The consignee sorted out the damaged pallets during and after warehousing, and classified into three groups, and we ascertained as shown below:

<u>Package Condition</u>	<u>Damaged Pallets</u>	<u>Condition Found</u>
Burst	65 pallets	Packages were burst and the bricks were repacked in pallets and shrink-wrapped
Heavy	53 pallets	Packages were heavily broken, with steel bands broken/cut and/or angle protectors buckled
Slight	257 pallets	Packages were slightly broken, with steel bands bent, and the bricks had moved on the pallet, approximately 3 cm to 7 cm

**3) Particulars of damaged cargo****3-1. Burst**

<u>Invoice Description</u>	<u>Invoice Weight (MT)</u>	<u>FOB (USD) Unit Price (A)</u>	<u>Damaged Pallets</u>	<u>No. of Bricks</u>	<u>Weight (MT) (B)</u>	<u>Amount USD (A) x (B)</u>
15ET1-B	130.188	982	9	1,590	10.221	10,037.02
C15ET3A-F	23.147	986	16	2,000	16.065	15,840.09
14KT	104.636	923	6	1,696	5.965	5,505.70
14KS	24.276	998	1	168	1.428	1,425.14
14KS2	18.176	1,031	11	1,476	13.326	13,739.11
C15ET3-F	26.068	1,007	1	135	1.533	1,543.73
10CF22	122.994	1,094	2	244	2.178	2,382.73
10CK25	85.229	1,127	2	441	2.911	3,280.70
12CFW	101.111	1,082	7	891	6.405	6,930.21

10CFZ2	42.786	1,049	4	779	5.047	5,294.30
C10WK	20.414	969	2	328	1.798	1,742.26
C15ET3A-F(7)	1.717	836	1	106	0.859	718.12
C15ET3A(7)	0.022	711	-	2	0.011	7.82
14K(7)	10.627	881	3	640	3.981	3,507.26

Summary of Burst

Damaged pallet: 65 pallets  
 No. of bricks: 10,496 pcs  
 Weight: 71.728 M/T  
 Amount (FOB): USD71,954.19

3-2. Heavy

Invoice Description	Invoice Weight (MT)	FOB (USD) Unit Price (A)	Damaged Pallets	No. of Bricks	Weight (MT) (B)	Amount USD (A) x (B)
14KT	187.269	1,031	7	1,194	8.517	8,781.03
C15ET3A-F	23.147	986	16	2,335	19.973	19,693.38
14KT	104.636	923	5	1,120	3.991	3,683.69
15ET1-B	130.188	982	5	878	5.911	5,804.60
15ES	3.373	982	1	252	1.159	1,138.14
C15ET3A	0.258	861	-	3	0.016	13.78
C15ET3-F	26.068	1,007	1	135	1.533	1,543.73
10CF22	122.994	1,094	10	1,364	11.206	12,259.36
10CK25	85.229	1,127	1	84	1.218	1,372.69
12CFW	101.111	1,082	2	258	1.845	1,996.29
10CFZ2	42.786	1,049	1	94	0.619	649.33
C25RC6 (F)	2.318	909	1	20	0.554	503.59
C15ET3A-F(7)	1.717	836	1	106	0.859	718.12
C15ET3A(7)	0.022	711	-	2	0.011	7.82
14KT(7)	10.627	881	2	439	2.547	2,243.91

Summary of Heavy

Damaged pallet: 53 pallets  
 No. of bricks: 8,284 pcs  
 Weight: 59.959 M/T  
 Amount (FOB): USD60,409.46

3-3 Slight

Invoice Description	Invoice Weight (MT)	FOB (USD) Unit Price (A)	Damaged Pallets	No. of Bricks	Weight (MT) (B)	Amount USD (A) x (B)
15ET1-B	130.188	982	29	4,545	30.856	30,300.59
C15ETA3-F	172.272	986	49	5,531	46.091	45,445.73
C15ET3A	0.258	861	-	6	0.036	31.00
14KS	24.276	998	5	840	7.140	7,125.72
14KT	187.269	1,031	37	5,083	44.065	45,431.02
C15ET3-F	26.068	1,007	5	675	7.667	7,720.67
14KT	104.636	923	39	8,040	28.476	26,283.35
10CF22	122.994	1,094	35	3,998	36.852	40,316.09
10CK25	85.229	1,127	18	2,080	19.606	22,095.96
12CFW	101.111	1,082	28	3,645	23.715	25,659.63
10CFW	8.093	1,101	1	160	1.232	1,356.43
10CFL-3	4.187	747	1	142	1.395	1,042.07
10CFZ2	42.786	1,049	7	1,188	7.435	7,799.32
C10WK	20.414	969	2	406	2.097	2,031.99
14KT(7)	10.627	881	1	224	1.366	1,203.45

Summary of Slight

Damaged pallet: 257 pallets  
 No. of bricks: 36,563 pcs  
 Weight: 258.029 M/T  
 Amount (FOB): USD 263,843.02

**5. Use the cargo and Disposal of the damaged cargo**

The bricks are to be used for inside walls of electric furnaces, at temperatures of 2,000 °C by arc-heating, or ladle furnaces at 1,300 to 1,600 °C, in continuous casting systems, and they are subject to very strict quality control as regards.

In case of use of the bricks with broken or cracks in the mill, it is possible to inflict serious damage to the installation and/or facilities.

From the condition of found, we considered that the damaged bricks could no longer be used safely in the furnaces, and had no commercial value.

**6. Allowance**

According to the degree of damage, we picked out an adequate number of the pallets at random to inspect the contents.

On unpacking the pallets, we inspected the bricks together with four staff of the consignee and determined the quantity of damaged bricks referring to the under mentioned specifications, as follows:

- (a) Chip at the corner of the 3 sides: Less than 20 MM long on working face
- (b) Chip at the edge line: Less than 30 MM long on working face
- (c) Scratch: Less than 150 MM long, within 2 lines, but no parallel lines to working face

<u>Degree of Damage</u>	<u>No. of Pallets</u>	<u>No. of Bricks</u>	<u>Sound</u>	<u>Damaged</u>
Burst	3 pallets	519 pieces	187 pieces	332 pieces
Heavy	2 pallets	442 pieces	219 pieces	223 pieces
Slight	5 pallets	540 pieces	345 pieces	195 pieces

For reference, we examined the pallet as sound and found that there were no broken bricks. As the result of examining, and taking into consideration ordinary loss, we recommended the following reasonable allowance, to which the consignee agreed.

<u>Class</u>	<u>No. of Bricks (A)</u>	<u>Damaged (B)</u>	<u>Allowance (B)/(A)</u>
Burst	519 pieces	332 pieces	63.97 %
Heavy	442 pieces	223 pieces	50.45 %
Slight	540 pieces	195 pieces	36.11 %

Note) Refer to the attached Particulars of Segregation.

**7. Damage Amount**

As stated before, we calculated damage amount as follows:

<u>Class</u>	<u>Damaged Quantity</u>	<u>FOB Price</u>	<u>Allowance</u>	<u>E.T.L. (FOB)</u>
Burst	65 pallets or 10,496 pcs	USD71,954.19	63.97 %	USD46,029.10
Heavy	53 pallets or 8,284 pcs	USD60,409.46	50.45 %	USD30,476.57
<u>Slight</u>	<u>257 pallets or 36,563 pcs</u>	<u>USD263,843.02</u>	<u>36.11 %</u>	<u>USD95,273.71</u>
Total:	375 pallets or 55,343 pcs			USD171,779.38

$$\text{USD171,779.38} / \text{USD1,147,193.64} \times \text{¥144,136,000.00} = \text{¥21,582,749.- (A)}$$

Note) FOB on Invoice: USD1,147,193.64

Amount Insured: ¥144,136,000.00



Extraordinary Charge

The consignee reported the following extraordinary charge, and we checked and approved it to be reasonable for the handling of the shifted cargo.

Rental charge of special fork lift for 3 days: ¥70,000.-

Extra laborers: 15 men x @¥20,000 : ¥300,000.-

Total: ¥370,000.- (B)

**Total Damage Amount (A) + (B) : ¥21,952.749.-**

8. Outline of Voyage

Loading port:	Ying Kou (Bayuquan)
Vessel arrived at anchorage:	1622 hrs. on Aug. 20, 2008
Vessel berthed at Ying Kou:	2045 hrs. on Aug. 20, 2008
Loading commenced:	2235 hrs. on Aug. 20, 2008
Loading completed:	1545 hrs. on Aug. 22, 2008
Weather condition during loading	Cloudy
Sailing from Bayuquan:	1820 hrs. on Aug. 22, 2008
Sea condition during voyage:	NE or N winds 6-7 in force on Sept. 25 & 26, 2008
Weather damage to the hull:	Not damaged
Vessel arrived at Katakami anchorage:	0630 hrs. on Aug. 27, 2008
Vessel berthed at Katakami:	1455 hrs. on Aug. 27, 2008
Bags discharge commenced:	1030 hrs. on Aug. 28, 2008
Bricks discharge commenced:	1000 hrs. on Sept. 1, 2008
Bricks discharge completed:	1400 hrs. on Sept. 3, 2008

9. Particulars of Ship

Name of Ship:	M/V "JEWEL MASTER"
Name of Owner:	Senior Master International Ship Management Co., Ltd.:
IMO Number:	9264154
Port of Registry:	Belize
Gross Tonnage:	1,539 tons
Main Dimensions:	Length 74.30 m x Breadth 12.40 m x Depth 5.95 m
Class:	China Classification Society
Year Built:	2002
Shipmaster:	Capt. Yu Hao Qing

**10. Opinion**

From our survey, we are of the opinion that a great quantity of palletized cargo was damaged as a result of shifting due to improper stowage during the voyage.

Note) Attached

- 1) Photos, forming a part of this survey
- 2) Stowage Plan
- 3) Cargo Boat Note
- 4) Notice of Claim
- 5) Consignee's Specifications
- 6) Particulars of Segregation
- 7) Bill of Extraordinary Charge



NIPPON KAIJI KENTEI KYOKAI

  
S. IIDA, VICE PRESIDENT

For all enquiries, please call: Tel 079-239-5001

Exhibit 3



TOKIO MARINE  
NICHIDO

MILLEA GROUP

## SUBROGATION RECEIPT

TO : Tokio Marine & Nichido Fire  
Insurance Co., Ltd.

Dated 10. 8. 2008

EC 156858 ✓

Dear Sirs,

We have received from you the below sum in full settlement of our undermentioned claim and we acknowledge that by virtue of such payment you are subrogated to all our rights and remedies in and in respect of the cargo which was lost or damaged as undermentioned.

We undertake to render you every assistance in any action or actions you may be advised to take against the owners of the undermentioned vessel or any other person or persons in respect of this loss and if called upon we will undertake such action or actions or proceedings on your behalf, you holding us harmless against all costs, expenses and charges for the said action or actions or proceedings.

We also undertake to hand you any salvage which may be recovered in respect of the said loss.

Yours faithfully,

Assured Name: SHINSEI KOGYO CO., LTD.

Signature: Minoru Ohi



Your Case No. 08-8012103-9-9	Date of Remittance/Draft 2008. 10. 8	Policy No. 4500073200
Interest MAGNESIA CARBON BRICKS	Vessel JEWEL MASTER	
Casualty BREAKAGE	B/L No. Q079	
	Amount ¥21,952,749	

Exhibit 4

第 1 页 共 1 页



## 威海安洋国际船舶管理有限公司

WEIHAI SAFE OCEAN CO., LTD

ADD: Rm.1202 No.97 Shichang Road, Weihai City, P.R.C

TEL:0631-5869389 FAX:0631-5860767 E-MAIL:lecship@vip.sina.com

## FIXTURE NOTE

24<sup>TH</sup> Jul., 2008

IT IS THIS DAY MUTUALLY AGREED AND CONFIRMED BETWEEN  
UNDER-MENTIONED PARTIES ON THE FOLLOWING TERMS AND  
CONDITIONS:

VESSEL: MV JEWEL MASTER (ALL DETAILS ABOUT)

FLAG/BELIZE BUILT/2002 GRT/1539 NRT/925 DWT/2438 DWCC/2200

LOA/79.99 BM/12.40 DEPTH/5.95 GRAIN/3309 BALE/3102 H/H:1/1

HATCH SIZE:35.2 X 8.6m GLESS STEEL BOTTOM CLASS/CCS SD

1. CARGO &amp; QTTY: MAX 2200MT MINERAL IN BULK &amp; TON BAGS

2. LOADING PORT: 1 SBP BAYUQUAN, CHINA

3. LAYCAN: 14<sup>TH</sup>—20<sup>TH</sup>/Aug., 2008

4. DISCHARGING PORT: 1 SBP KATAKAMI, JAPAN

5. LOAD/DISCH RATE: CQD BENDS.

6. FREIGHT RATE: FIOT BSS 1/1 USD67,000.00 IN L/S

7. FRT PAYMEN: FULL FRT TO BE PAID ON US DOLLAR TO OWNERS NOMI  
BANK ACCT W/ 3 BANKING DAYS AFTER COMPLETION OF LOADING  
BUT ALWAYS BBH.8. DETENTION CHARGES: USD2,400.00 PER DAY OR PRO-RATA TO BE PAID  
TO OWNERS IF CHARTERERS/SHIPPERS/RECEIVERS FAILED TO READY  
CARGO/DOCUMENTS ON VESSEL ARRIVAL AT BENDS AND INCLUDING  
FREIGHT PAYMENT CARRYING OUT.

9. OWNERS AGENT BENDS.

10. SHORESIDE/SHIPSIDE TALLY TBF CHARTERERS/SHIP OWNER ACCT

11. LIGHTERAGE/LIGHTENING IF ANY TBF CHTRS ACCOUNT AT BENDS.

12. SHORE CRANE CHARGES IF ANY TBF CHARTERERS ACCT AT BENDS.

13. ANY TAXES/DUES ON VSL/CARGO TBF OWNERS/CHTRS ACCT.

14. L/S/D/SEPERATION IF ANY TBF CHTRS ACCT/ARRANGEMENT BT BENDS.

15. ARBITRATION IN HONGKONG WITH ENGLISH MARITIME LAW APPLIED.

16. OTHER AS PER GENCON C/P DETAILS REVISED 1994.

17. COMM: 2.50 % TTL

END

FOR AND ON BEHALF OWNERS

For and on behalf of  
WEIHAI SAFE OCEAN CO., LTD.  
威海安洋国际船舶管理有限公司

Authorized Signature(s)

FOR AND ON BEHALF CHARTERER

For and on behalf of  
KK SHIPPING CO., LIMITED  
亨康船務代理有限公司

Authorized Signature(s)